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May 13, 2005

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing
Date of Filing: April 12, 2004
Case Number: TSO-0089

This Decision concerns the eligibility of XXXXXXXXXXXXXXXXXXXX (hereinafter referred to as "the individual") for access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." ¹

I. BACKGROUND

In 2002, the individual's employer, a Department of Energy (DOE) contractor, requested that his security clearance be reinstated. ² In response to this request, the local security office conducted an investigation of the individual. As part of this investigation, the individual completed a Questionnaire for National Security Positions (QNSP). On this QNSP, he indicated that he had used cocaine "3 or 4" times from March 1991 through October 1991, and that he had used marijuana "many" times from May 1987 through December 1997. DOE Exhibit (Ex.) 1 at pg. 8. However, on a Questionnaire for Sensitive Positions (QSP) that he completed in 1993, he indicated that he had not used or possessed any illegal drug in the previous five years. DOE Ex. 2 at pg. 8. In an attempt to reconcile this conflicting information and to obtain further information about the individual's drug usage, in 2003 the local security office conducted a Personnel Security Interview (PSI) of the individual. During this interview, the individual admitted to having used illegal drugs while holding a security clearance. PSI at 14. Subsequently, the Director of the local DOE facility reviewed the individual's file and determined that derogatory information existed that cast into doubt the individual's eligibility for a security clearance. The Director informed the individual of this determination in a letter that

¹An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to in this Decision as access authorization or a security clearance.

²The individual had previously held a security clearance, which was terminated when it was determined that his job no longer required it.

set forth in detail the DOE's security concerns and the reasons for those concerns. I will hereinafter refer to this letter as the Notification Letter. The Notification Letter also informed the individual that he was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt concerning his eligibility for access authorization. The individual requested a hearing on this matter. The Manager forwarded this request to the Office of Hearings and Appeals and I was appointed the Hearing Officer.

II. STATEMENT OF DEROGATORY INFORMATION

As indicated above, the Notification Letter included a statement of derogatory information that created a substantial doubt as to the individual's eligibility to hold a clearance. This information pertains to paragraphs (f) and (k) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8. Paragraph (f) defines as derogatory information indicating that the individual "has deliberately misrepresented, falsified, or omitted significant information from a Personnel Security Questionnaire [or] a Questionnaire for Sensitive (or National Security) Positions" With regard to this paragraph, the Letter cites the individual's failure to list his illegal drug usage on the 1993 QSP.

Paragraph (k) refers to information indicating that the individual has "sold, transferred, possessed, used, or experimented with a . . . substance listed in the Schedule of Controlled Substances established pursuant to section 202 of the Controlled Substances Act of 1970 (such as marijuana, cocaine, amphetamines, . . . etc.)" except as prescribed by a physician or otherwise authorized by federal law. As support for this paragraph, the Notification Letter relies on the individual's statements on the 2002 QNSP and during the 2003 PSI that he used marijuana and cocaine from 1987 to 1997 and March through October 1991, respectively.

III. REGULATORY STANDARDS

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictate that in these proceedings, a Hearing Officer must undertake a careful review of all of the relevant facts and circumstances, and make a "common-sense judgment . . . after consideration of all relevant information." 10 C.F.R. § 710.7(a). I must therefore consider all information, favorable or unfavorable, that has a bearing on the question of whether granting the individual a security clearance would compromise national security concerns. Specifically, the regulations compel me to consider the nature, extent, and seriousness of the individual's conduct; the circumstances surrounding his conduct; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the likelihood of continuation or recurrence of the conduct; and any other relevant and material factors. 10 C.F.R. § 710.7(c).

A DOE administrative proceeding under 10 C.F.R. Part 710 is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). Once the DOE has made a showing of derogatory information raising

security concerns, the burden is on the individual to produce evidence sufficient to convince the DOE that restoring access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). *See Personnel Security Hearing*, Case No. VSO-0013, 24 DOE ¶ 82,752 at 85,511 (1995) (*affirmed* by OSA, 1996), and cases cited therein. For the reasons that follow, I conclude that the individual has not made this showing, and that he should therefore not be granted a clearance at this time.

IV. THE HEARING

At the hearing, the individual did not dispute the allegations set forth in the Notification Letter. Instead, through his own testimony, he attempted to demonstrate that he no longer uses illegal drugs and that he is an honest and trustworthy person. Despite being informed of the importance of submitting evidence in corroboration of his account of the relevant events, the individual did not submit any exhibits, or present any testimony other than his own.³

He started out by attempting to explain his failure to report the illegal drug usage on the QSP. He stated that “it was a case of me just not wanting to bring up something that might affect my job when it was for something [a clearance] that was not even necessary for my job. . . .” Hearing Transcript (Tr.) at 17. He went on to indicate that his drug usage and falsification occurred during a period in his life when he had turned away from the religious upbringing of his youth. However, in 1996 he “started having problems in [his] marriage and at that point . . . I basically decided that I was tired of the way my life was going and I was going to just try it a different way. I had been trying it my way for 18 years and decided to go back to more the way I was brought up. And so that is when I made the decision to just make a break with my previous lifestyle and make a complete change.” Tr. at 20.⁴ Part of the change, he added, was to stop using drugs and to stop associating with the people with whom he previously used drugs. Tr. at 20-21. Accordingly, the individual testified that his last usage of illegal drugs occurred in late 1996 or early 1997. *Id.* Another part of his transformation was to become more observant of his faith and more involved in his church. Tr. at 24, 25. The individual testified that he now attends church every Sunday and is an active participant in his congregation, holding the position of Secretary to the Elders Quorum. Tr. at 25, 35. He concluded that if he had also omitted his drug usage from the 2002 QNSP, “nobody would have known the difference, and it would not have made any difference because I was not doing that anymore anyway, . . . but I have come forward

³See memorandum of June 22, 2004 pre-hearing telephone conference call between Robert Palmer, Hearing Officer, DOE Counsel and the individual.

⁴During the PSI, he also indicated that his father’s death was part of the impetus for re-examining the course of his life, and that the marital difficulties led to divorce proceedings. PSI at 29.

and said, “Hey, I need to get this fixed and get this off my conscience.” The individual later explained that he “could not go and be dishonest again because, more than anything, it would be being dishonest with myself and where I am now. . . . It would be even more wrong than it was the first time. I could not face myself or my church leaders. That is as important to me as anything at this point.” Tr. at 30.

V. ANALYSIS

After reviewing the testimony described above and the record in this matter as a whole, I find that there is no evidence supporting the individual’s claim that he has not used illegal drugs since 1996 or 1997 and almost no evidence supporting his assertion that he has become a more honest person because of a re-dedication to his religious beliefs. Because I am unwilling to accept without independent documentation the statements of an individual who has previously demonstrated a willingness to mislead the DOE in security-related matters, I conclude that the concerns raised in the Notification Letter under paragraphs (f) and (k) remain unresolved. *See, e.g., Personnel Security Hearing, 27 DOE ¶ 82,814 (1999) (uncorroborated statements of individual about drug usage insufficient to mitigate DOE security concerns under paragraph (k)) and cases cited therein.*

In reaching this conclusion, I am aware of the difficulties inherent in attempting to prove abstention from drug usage or rededication to a church or a system of religious beliefs. However, previous participants in security clearance hearings have successfully demonstrated these attributes through the presentation of testimony from family members, friends, therapists, fellow church-goers and others, or of documentation such as negative drug test results and proof of participation in drug rehabilitation programs. *See, e.g., Personnel Security Hearing, Case No. TSO-0095 (January 12, 2005).* Here, however, no such supporting testimony or documentation was submitted. The only circumstance that I found to be remotely mitigating is the fact that the individual provided accurate information on the 2002 QNSP about his past drug use, and the value of this single instance of honesty is attenuated by the fact that it was required by law.

VI. CONCLUSION

As previously stated, the individual testified that he omitted the information from his 1993 QSP for fear that it would affect his job. After reviewing the record, I am not convinced that the individual would fulfill his obligation to reveal relevant information to DOE Security about his future behavior if he felt that this could adversely affect his employment status. Because the individual has not adequately addressed the security concerns set forth in the Notification Letter, I find that he has not demonstrated that granting him a clearance would not endanger the

common defense and would be clearly consistent with the national interest. Accordingly, the individual should not be granted access authorization.

Robert B. Palmer
Hearing Officer
Office of Hearings and Appeals

Date: **May 13, 2005**